84-1003 (1)

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1984

THE SAILORS' UNION OF THE PACIFIC,
SEAFARERS INTERNATIONAL UNION OF
NORTH AMERICA, AFL-CIO,
Petitioners,

VS.

RAYMOND J. DONOVAN, PETER TURNER,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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68 pp

QUESTIONS PRESENTED

1. Whether or not the "one calendar month" period of 29 U.S.C. §482 is unenforceable or may not be relied upon by a union to defeat an untimely member election complaint.

2. Whether or not a three membership rule is a "reasonable rule" in the context of "the peculiar circumstances under which men ship at sea."

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Petitioner Sailors' Union of the Pacific, Seafarers International Union of North America, AFL-CIO, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on August 7, 1984.

OPINIONS BELOW

The Court of Appeals denial of Petition for Rehearing was entered on September 25, 1984. The opinion of the Court of Appeals was entered August 7, 1984, [Appendix A], and affirms the opinion of the District Court for the Northern District of California entered on October 31, 1983, [Appendix B].

JURISDICTION

This Court's jurisdiction is invoked under Title 28, United States Code, Section 1254(1).

QUESTIONS PRESENTED

1. Whether or not the "one calendar month" period of 29 U.S.C. §482 is unenforceable or may not be relied upon by a union to defeat an untimely member election complaint.

2. Whether or not a three membership rule is a "reasonable rule" in the context of "the peculiar circumstances under which men ship at sea."

STATUTORY PROVISIONS INVOLVED

The following statutory provisions are primarily involved in the disposition of this matter:

United States Code, Title 29:

§411. Bill of rights; constitution and bylaws of labor organizations:

(a)(1) **Equal rights.**--Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) **Freedom of speech and assembly.**--Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions, and to express at meetings of the labor organization his views, upon candi-

dates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with his performance of its legal or contractual obligations.

* * *

§412. Civil action.

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

§482. Enforcement.

Filing of cmplaint; presumption of vailidity.

(a) A member of a labor organization--

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The

challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

Investigation of complaint; commencement of civil action by Secretary; jurisdiction; preservation of assets

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor or-

ganization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

STATEMENT OF THE CASE

A. Procedural Statement

The within action was filed October 8, 1982, by the Secretary of Labor pursuant to the provisions of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§401 et seq., alleging that Petitioner Sailors' Union of the Pacific (SUP) conducted an election of officers from December 1, 1981, to January 31, 1982, under voter eligibility rules deemed violative of the Act, to wit: the application of a three year membership rule as a precondition for participation in SUP elections. (CR 1).* Petitioner filed its Answer on November 2, 1982. (CR 5).

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*Citations are to Clerk's Record in Ninth Circuit.

Discovery by way of requests for admissions and interrogatories was had between the parties; and on March 7, 1983, Appellant SUP moved for summary judgment in its favor. (CR 25).

Thereafter, on March 11, 1983, Respondent Donovan filed his answer to the Counterclaim previously filed by Petitioner on November 2, 1983. (CR 13).

Respondent's response and cross-motion for summary judgment was filed April 11, 1983. (CR 84).

On April 19, 1983, Peter Turner, plaintiff in the related matter of Turner v. Dempster, No. 83-2407, filed a complaint in intervention and moved for intervenor status in the within action.

Petitioner's opposition to the cross-motion for summary judgment was filed June 6, 1983, together with its opposition to the complaint and motion for intervention previously filed by Peter Turner. (CR 149).

The parties' respective motions for summary judgment, and the motion to intervene interposed by Peter Turner, were heard by the District Court on September 15, 1983; and on September 27, 1983, the Court entered an Order granting summary judgment in Respondent's favor based upon its finding that, for purposes of voting eligibility, the SUP's "three year requirement is unreasonable and violative of 29 U.S.C. §481(e)." Mr. Turner's motion to intervene was denied. (CR 18).

B. Factual Statement

The facts pertinent to this appeal are that Petitioner SUP conducted an Officers Election from December 1, 1981, through January 31, 1982, under a union constitutional requirement that limited voter and candidacy eligibility in SUP elections to members with three or more years of union membership and, in protest thereto, Respondent Peter Turner failed to file a timely complaint pursuant to the "one calendar month" limitation period of 29 U.S.C. §482(a), all of which facts are set forth in the Court of Appeals Opinion appended hereto.

REASONS FOR GRANTING THE WRIT

I.
THE COURT OF APPEALS' DECISION CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS RESPECTING ENFORCEMENT OF THE "ONE CALENDAR MONTH" LIMITATION PERIOD OF 29 U.S.C. §482(a)

The Court of Appeals' answer to Petitioners' challenge to the untimeliness of Respondent Turner's election complaint was that the "union failed to satisfy its obligation of clearly providing a responsive procedure for members to contest election results," and therefore the mere mailing of a letter to the union's president on March 12, 1982, was sufficient to meet the timeliness requirement of 29 U.S.C. §482(a). Yet, both the facts of the case and the controlling case law in the third and sixth circuits compel a different conclusion.

As provided by the SUP's Constitutiuon and Bylaws, the sole conceivable avenue for

protest to the union's election procedures would be an objeciton to the report of the Balloting Committee, which is vested with the responsibility of supervising officer elections. As provided in pertinent part by Article XIII, Section 10:

> The report of the Impartial Balloting Agent shall be signed by the Balloting Committee. The report shall be read to the membership at Headquarters and all Branches at the first regular meeting after preparation of their report and shall be spread in full upon the minutes. If approved by the membership, the report shall be accepted as final and shall conclusively establish that the election was properly conducted and the ballots properly counted.

(Emphasis supplied.) Par. 5, Dempster Declaration. (CR 82).

The report of the Impartial Balloting Agent relating to the December 1-January 31, 1982, Officer's Election was submitted for membership approval and approved on February 8, 1982. Par. 6, Dempster Declaration. (CR 82).

Thus, by operation of the SUP's Constitution and Bylaws, the "remedies available," if any, existed under Article XIII, Section 10, above; and, upon the filing of the Balloting Committee's report of February 8, 1982, which is constitutionally deemed a "final" decision on the propriety of the eleciton, the "one calendar month" limitation period within which to file a complaint with Respondent's Secretary commenced. 29 U.S.C. §482(a). Yet, under the alleged facts of appellee's

Complaint, member Turner failed to file any complaint with the Secretary until July 6, 1982, some five calendar months after the exhaustion date of any possible remedy under the SUP Constitution. Par. VII, Complaint (10/8/82). (CR 2).

The fact that no other remedy existed after February 8, 1982, was further confirmed by the Department of Labor in its discussions with SUP officials and counsel in August of 1982, when it advised the Union that in the Department's view the union had no internal remedies to exhaust after the filing of the Balloting Committee's report other than direct recourse to the Department of Labor, and so confirmed their view in writing. Par. 4, Dempster Declaration. (CR 81).

Under substantially similar circumstances, the Third Circuit in Hodges v.

United Steelworkers of America, 459 F.2d 348, 352 (3rd Cir. Pa. 1972), sustained a summary judgment against the Secretary's action for failure of the complainting member to file within "one calendar month" following the expiration and exhaustion of his remedy under his union constitution. In Steelworkers, as herein, the final action of the union involved the filing of a "Tellers Report" confirming the propriety of the challenged procedure, causing the Court to hold:

> Because Wisniewski could have had a union remedy available later than April 18, 1969, the day the Teller's Report was filed, and because Winiewski's letter of protest to the Secretary of Labor was filed on May 29, 1969--clearly beyond the 30 day period provided by the statute--the district court properly

> granted the International's motion for summary judgment. (Emphasis supplied.)

By like logic, since member Turner had no union remedy after February 8, 1982, the day the Election Committee's report was filed, his July 6, 1982, filing was untimely.[1]

This jurisdictional shortfall is also evident, though in another form, on the very

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1. It should be noted in this regard that member Turner admitted his awareness of the finality of this date in his protest letter of March 12, 1982, wherein he contested the fact that the Election Committee's Report had been adopted by the membership, claiming, instead, that:

> The majority of the members voting at headquarters and at the branches during the regular February meetings have non-concurred with the balloting committee's report, contrary to the article on the front page of the February issue of the "West Coast Sailors." Par. 7, Dempster Declaration. (CR 82).

face of Respondent's Complaint. Paragraph VII thereof provides as follows:

> By letter dated March 12, 1982, Peter Turner, a member in good standing of the local, filed a protest of the election with defendant's President Paul Dempster. By letter dated April 2, 1982, Dempster informed Turner that his protest was being forwarded to the American Arbitration Association. By letter dated July 2, 1982, which is within one calendar month after invoking internal remedies for three calendar months, Turner filed a timely complaint. (Emphasis supplied.) Complaint (10/8/82). (CR 2).

The referenced forwarding of Turner's protest to the American Arbitration Association, ra-

ther than acceptance of such by the SUP, constituted a rejection of the protest by the Union because under no view of the facts, or reading of the Constitution and Bylaws of the SUP, could one conclude that the American Arbitration Association was part of, or constituted, a "remedy available under the constitution and bylaws of such organization and of any parent body" as specified by LMRDA Section 402(a), 29 U.S.C. §482(a)(1).

It would follow, therefore, that as of the rejection of member Turner's letter and forwarding to the American Arbitration Association on April 2, 1982, Mr. Turner had "exhausted" his remedies with the "labor organization" and was compelled by law to "file a complaint with the Secretary within one calendar month thereafter," which would have required a filing on or about May 2, 1982, and not two months later on July 6,

1982. Given this failure, Respondent's have failed to plead a case within the jurisdictional parameters of LMRDA Section 402(a), 29 U.S.C. §482(a). FRCP 12(c); Wirtz v. Local Union No. 125, International Hod Carriers' Bldg. and Common Laborer's Union of America, AFL-CIO, 215 F.Supp. 703, 709 (D.C. Mich. 1963); Hall v. Marshall, 476 F.Supp. 262, 265 (D.C. Pa. 1979); affirmed 622 F.2d 578 (3rd Cir. 1980).

Moreover, there is no reported or unreported case declaring that the "one calendar month" period of LMRDA Section 402, 29 U.S.C. §482, is unenforceable or may not be relied upon by a union to defeat an untimely member complaint. See: Hodgson v. District 6, United Mineworkers of America, 474 F.2d 940, 946 (6th Cir. 1973), F.2d 70, 75 (3rd Cir. Pa. 1983); Brennan v. Local Union 122, Amalgamated Clothing Workers of

America, 564 F.2d 657, 660 (3rd Cir. Pa. 1977); and, Hodgson v. Local Union 6799, United Steelworkers, 403 U.S. 333, 341 (1971).

As regards the second prong of the Court of Appeals' decision that the Union was delinquent in some manner in not educating Mr. Turner as to the extent of his available remedies, this argument is likewise deficient. Ignorance is not an excuse for the failure to exhaust internal union remedies. "Union members cannot rely on their ignorance of intra-union procedures, or their failure to determine the same, or, indeed, on misrepresentations by union officials (citations)" as an excuse for not becoming aware of the extent and existence of such remedies. Monroe v. Autoworkers, 540 F.Supp. 249, 261 (S.D. Ohio 1982).

More importantly, however, member Turner was at all times pertinent to the filing of his election complaint represented by counsel, he had the benefit of an ongoing liaison with the Department of Labor and with all parties relative to the filing of such a complaint arising out of the related case of Turner v. SUP, No. 83-2407, and he must be charged with notice that the Department of Labor had formally advised the SUP that it had no internal remedies after the filing of the Balloting Committee's Report on February 8, 1982. [D-AB 7-7]. Against this factual background, we are not faced with an unrepresented unsophisticated union member being disadvantaged by a lack of his knowledge of his available remedies.

II.

THE COURT OF APPEALS' DECISION CONFLICTS WITH THE DECISIONS OF THIS COURT AND THE SECOND CIRCUIT RESPECTING THE REASONABLENESS OF A THREE YEAR MEMBERSHIP RULE IN THE MARITIME INDUSTRY

The Court of Appeals held that the SUP's "three year requirement is inconsistent with the purposes of the Act and not in compliance with the Secretary's regulation" to the effect that a membership requirement longer than two years is impermissible, citing 29 CFR §452.37. However, in so concluding, the Court of Appeals' decision made no allowance for the longer periods of time allowed by this court and other courts.

In its decision in Calhoon v. Harvey, 379 U.S. 134 (1964), this Court approved implementation of a five year membership rule under the circumstances applicable to the Marine Engineers Beneficial Association. And, in Wirtz v. National Maritime Union, 399 F.2d

544 (2nd Cir. N.Y. 1968), affirming the District Court's decision at 284 F.Supp. 46 (D.C.N.Y. 1968), the Second Circuit approved a five year membership rule. These decisions, we submit, are a reflection of the exceptional status accorded maritime unions under the Labor Management Reporting and Disclosure Act, which status is best reflected in the case holding of Goldberg v. Marine Cooks and Stewards, 402 F.Supp. 804, 845 (D.C.N.D. Cal. 1967), in which the District Court found that:

> It is true that under the rules of the union constitution, an individual must serve for an extended period at sea during three years of shipping before he is eligible to become a full-book member and that such protracted period precludes many individuals from becoming eli-

gible to vote, but it is not for the Court to upset such membership requirements unless it be deemed arbitrary and capricious or otherwise unreasonable. The peculiar circumstances under which men ship at sea are such as to warrant the imposition of conditions which assure stability of employment over a period of time. This the union has sought to do. It might well be that the condition imposed by the union is unnecessarily long as viewed by the Court; but it is not for this tribunal to impose its concept of a proper period upon the union. Accordingly, the Court finds that only full-book members are eligible to vote in the election to be conducted by the Secretary of Labor. (Emphasis supplied.)

Ibid. at 845.

In sum, the Calhoon and Wirtz decisions enhance the propriety of the District Court's decision in Goldberg v. Marine Cooks and Stewards, 204 F.Supp. 844 (D.C. Cal. 1962), and sustain Petitioner SUP's three year rule as eminently "reasonable" under the circumstances. 29 U.S.C. §481(c). Also: Marshall v. Local 1010, Int'l Brotherhood of Painters, 90 CCH ¶12,453 (M.D. Fla. 1980) [four year membership rule]. By applying these holdings to this case, moreover, the interests of developing a consistent body of federal labor law is served and the instructive effect of these rulings within the context of the LMRDA will not be rejected. 29 C.F.R. Part 452, §452.1 [conduct governed by "authoritative rulings of the courts"]; Gunther v. Washington County, 623 F.2d 1303, 1319 (9th 3ir. Or. 1979), cert. granted 449 U.S. 950

(1980); affirmed, 452 U.S. 161 (1981) [reasoning of other circuits and district courts pertinent to deliverations]; Garner v. Teamsters, 346 U.S. 485, 490-491 (1953) ["diversities and conflicts" in labor law to be avoided]; Beriault v. Local 40, Supercargoes & Checkers of ILWU, 501 F.2d 258, 260-261 (9th Cir. Cal 1974) ["potentially conflicting rules of law ... cannot be permitted to operate" in the field of labor relations].

Putting aside the controlling effects of Goldberg v. Marine Cooks and Stewards, supra, and Wirtz v. National Maritime Union, supra, and Calhoon v. Harvy, supra, the SUP's three year membership rule was nonetheless "reasonable." Section 101(a)(1) of the LMRDA, 29 U.S.C. §411(a)(1) states that "every member of a labor organization shall have equal rights and privileges ... to vote in elections or referendums .. subject to

reasonable rules and regulations in such organization's constitution and by-laws." (Emphasis supplied.) While the observations of the Department of Labor of what is "reasonable" may well be supportable in the working environment of the factory, shop or office, it is not particularly well suited to "the peculiar circumstances under which men ship at sea." Goldberg v. Marine Cooks and Stewards, supra at 884.

A major "circumstance" of a seaman's life is the fact that his profession is one of the most regulated employments in the scheme of federal regulations, with a prior history of some one hundred years of statutory control. See: 46 U.S.C. §451 et seq.; 29 C.F.R. Subchapters B and P. Over the years, the Coast Guard has effectively engrafted into the statutory scheme an "apprentice program" of ratings, classifications, certifications,

examinations and experience qualifications specifically designed to assure the employment of qualified merchant mariners. Compare: 29 C.F.R. §29.4.[2] This unrivaled governmental concern with the qualification of seamen is dictated by the special skill and safety demands made upon seagoing personnel and the risk that inexperienced and unqualified individuals pose. For this reason,

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2. Employment as a professional seaman would appear to meet the regulatory criteria for "apprenticeable occupations" set forth by the Secretary of Labor pursuant to the National Apprenticeship Act of 1937, 29 U.S.C. §50, and reported at 29 C.F.R. §29.4:

> Criteria for apprenticeable occupations:
>
> An apprenticeable occupation is a skilled trade which possesses all of the following characteristics:
>
> (a) It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training. [Seamen proceed up a hierarchical ladder from Ordinary Seaman to Able Unlimited under command supervision at all stages. See: 46 U.S.C. §§672, 29 C.F.R. §12.01 et seq.]

by statute and regulation, the Coast Guard has promulgated certain manning qualifications of unlicensed seamen aboard United States flag vessels. See: 46 U.S.C. §672; 46 C.F.R. 157.20. Failure to secure compliance with these legally mandated manning scales exposes vessel operators not only to

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2. (continued)

> (b) It is clearly recognized and identified throughout an industry. [Coast Guard jurisdiction over training and certification of American seamen has been exclusive for well over a century in the maritime industry. See 46 U.S.C. §§451-713.]
>
> (c) It involves manual, mechanical or technical skills and knowledge which requires a minimum of 2,000 hours of on-the-job work experience. [The certification of an able bodied seaman requires three year's employment at sea. See: 29 C.F.R. §12.05-7 - Service or Training Requirements.]
>
> (d) It requires related instruction to supplement on-the-job training. [Andrew Furseth School, Sec. 2, SUP Shipping Rules, Exhibit A, Dempster Declaration; Ordinary Seaman laid off for training; Sec. 49, SUP Shipping Rules, Ibid.]

Coast Guard sanctions, but also to liability damages for torts occurring as a result of deficient manning. See: Complaint of B.F.T. No. Two, 433 F.Supp. 854, 865-866 (D.C. E.D. Pa. 1977); The Sakito Maru, 41 F.Supp. 769, 777 (D.C. C.D. Cal. 1941).

This statutory scheme has been embodied in the collective bargaining agreements prevailing in the maritime industry, particularly in the area of hiring halls. The practice of the SUP under their collective bargaining agreement with the Pacific Maritime Association (PMA) is typical in that it contractually binds the union to providing "qualified seamen" in required ratings to man PMA vessels, with priority being given to the dispatch of certified members based on prior seatime. Pars. 3, 4, 6, Turner - Dempster

Declaration, Exhibit One, Dempster Declaration. (CR 65-66).

Given a statutory scheme substantially limiting employment to only qualified and certificated personnel, and given a contractual obligation to dispatch only qualified personnel, it can hardly be termed "unreasonable" for a union to structure its membership according to the differing qualifications, experience levels and interests of its members so that it can meet those contractual and statutory obligations.

The subject three year rule, by postponing the grant of full membership rights, has the salutary effect of requiring new members to pursue the statutory scheme "which is designed to produce competent (seamen) in the industry the union serves." 29 C.F.R. §452.89. The rule can hardly be attacked as

"unreasonable" under the "peculiar circumstances" herein; and, the sustaining of this rule would be consistent with the policy of the federal courts to "exercise sound reluctance to interfere with union affairs." Kahn v. Hotel & Restaurant Employees and Bartenders International, 469 F.Supp. 14, 20-21 (D.C. Cal. 1977); Busch v. Givens, 627 F.2d 9787, 981 (9th Cir. Cal. 1980); Stelling v. Brotherhood of Electrical Workers, 487 F.2d 1378, 1389 (9th Cir. Cal. 1978); Blanchard v. Johnson, 532 F.2d 1074, 1078 (6th Cir. Ohio 1976); Gurton v. Aarons, 339 F.2d 371, 375 (2nd Cir. N.Y. 1964)

CONCLUSION

For the foregoing reasons, therefore, a writ of certiorari should issue to review the Opinion of the Ninth Circuit in this matter.

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Appendix A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 83-2523

RAYMOND J. DONOVAN, Secretary of Labor, United States Department of Labor,

Plaintiff-Appellee,

vs.

SAILORS' UNION OF THE PACIFIC and PAUL DEMPSTER,

Defendants-Appellants.

[August 7, 1984]

Appeal from the United States District Court for the Northern District of California

Robert P. Aguilar, District Judge, Presiding

Argued and Submitted June 14, 1984

Before HUG, TANK and FARRIS, Circuit Judges

FARRIS, Circuit Judge:

The Sailors' Union of the Pacific conducted an election of officers from December 1, 1981, to January 31, 1982. Under the union's constitution, only those individuals who had been union members for three years or more were permitted to run for office or vote. Turner protested the election results by writing a letter to the President of the union. Approximately four months later, he filed a complaint with the Secretary of Labor under section 402(a) of the Labor-Management Reporting and Disclosure Act of 1959. 29 U.S.C. §482(a). The Secretary filed suit under the Act to challenge the union's voting and candidate elibility requirements and the election results. The district court held that the three-year membership requirements was unreasonable and invalidated the election results. We affirm.

TIMELINESS OF COMPLAINT

The union argues that Turner's complaint to the Secretary was not timely. 29 U.S.C. §482(a) provides that a union member:

> (1) who has exhausted the remedies available under the constitution and bylaws ... or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter ....

The union constitution does not expressly provide for a procedure which members may use to challenge election results. Article XIII, section 10 provides that the Balloting Committee must submit an election report to the

membership which, if approved, conclusively establishes that the election was properly conducted. The report was approved on February 8, 1982. The union argues that Turner's failure to contest the election report and file a complaint with the Secretary within one month of the approval of the report renders his complaint untimely. We reject the argument. Neither Article XIII nor any other provision of the constitution states that the procedure for challenging an election is to contest the Committee Report. Turner's failure to file a complaint within one month of the approval of the report does not render his complaint untimely.

On March 12, 1982, Turner filed a protest with the union President. The President replied on April 2, 1982, saying that he had forwarded the protest to the American Arbitration Association. On July 6, 1982, Turner

filed a complaint with the Secretary of Labor. Turner argues that, in protesting to the President, he pursued the remedy available under Article XV, sections 2(a) and (d) of the union constitution. Section 2(a) provides that the President "shall represent the Union on all occasions where representation is required and not otherwise provided by the Constitution." Section 2(d) provides that the President "shall bring before the regular and special meetings such grievances as may have been reported to him by members ...."

The union failed to satisfy its obligation of clearly providing a responsive procedure for members to contest election results. See Wirtz v. Local Union 125, Laborers' Int'l Union of North America, 389 U.S. 477, 484 (1968). Turner therefore had no guidance on how to present his challenge. Sending the protest letter to the President

was reasonable under the circumstances. When the President received the letter, the union was put on notice that Turner was protesting the election results. See Schultz v. Local 1291, Int'l Longshoremen's Ass'n, 429 F.2d 592, 597-98 (3d. Cir. 1970).

Since Turner reasonably attempted to invoke union remedies on March 12, 1982, and did not obtain a final decision within three months, he had one month thereafter within which to file a complaint with the Secretary. See 29 U.S.C. §482(a)(2). His July 6, 1982, complaint was therefore timely filed.

CANDIDATE ELIGIBILITY

The district court held that the union rule restricting candidate eligibility to those individuals who had been union members for three years was unreasonable and violative of 29 U.S.C. §481(e). We review de

novo. Brennan v. Local 3489, United Steelworkers of America, 520 F.2d 516, 523 (7th Cir. 1975), aff'd sub nom. Local 3489, United Steelworkers of America, AFL-CIO v. Usery, 429 U.S. 305 (1977).

29 U.S.C. §481(e) provides that "every member in good standing shall be eligible to be a candidate and to hold office (subject to ... reasonable qualifications) ..." The Supreme Court has twice considered the reasonableness of candidate eligibility requirements under section 481(e). In Local 3489, United Steelworkers of America v. Usery, 429 U.S. 305 (1977), the Court held unreasonable a union rule limiting eligibility to members who had attended at least half of the local's regular meetings for three years prior to the election. In Wirtz v. Hotel, Motel & Club Employees Union, Local 6, 391 U.S. 492 (1968), the Court invalidated a union rule

which limited eligibility for major elective officers to members holding elective office or who had previouslyi held elective office. In both cases, the Court concluded that the antidemocratic effects of the rules outweighed the interests asserted in support of the rules. Although Steelworkers and Hotel Workers did not concern restrictions based on length of membership, they indicate that restrictions on candidate eligibility should be closely scrutinized. The "reasonable qualifications" limitation of 29 U.S.C. §481(e) should not be given a broad reach. Hotel Employees, 391 U.S. at 499.

Whether a particular qualification is reasonable depends on its consistency with the purposes of the Act. Steelworkers v. Usery, 429 U.S. 305, 309 (1977). The Act was intended to prevent undemocratic practices in union government, including dictatorial and

corrupt leadership and a disregard for the rights of the rank and file. Hotel Employees, 391 U.S. at 497. Congress decided that through free and democratic elections, union members could take the necessary steps to fight abuses of power by union leadership. Wirtz v. Local 153, Glass Bottle Blowers Assn., 389 U.S. 463, 470-71 (1968). Qualifications that unduly interfere with a free choice of candidates are at cross-purposes with the Act and therefore are unreasonable. Donovan v. Local No. 120, Laborers' Int'l Union of North America, 683 F.2d 1095, 1102 (7th Cir. 1982).

We are guided also by the Secretary's regulation on eligibility restrictions. Under 29 C.F.R. §452.37, a union may limit candidate eligibility to those individuals who have been union members for at least two years, but a longer membership requirement is

impermissible. The Secretary's interpretative regulation is not binding, but is entitled to consideration. See Usery v. Local Div. 1205, Amalgamated Transit Union, 545 F.2d 1300, 1304 (1st Cir. 1976); Donovan v. Local 719 U.A.A.A.I.W. of America, 561 F.Supp. 54, 57 n.2 (N.D.Ill. 1982); but see Wirtz v. Local Union No. 406, 254 F.Supp. 962, 966 (E.D.La. 1966) (candidate eligibility regulations entitled to great weight.)

The three-year rule cannot be justified on the ground that it ensures that candidates will more likely be familiar with union members and union conditions. See Marshall v. Local 1010, Int'l Brotherhood of Painters and Allied Trades, AFL-CIO, 103 L.R.R.M. 3106 (M.D.Fla. 1980). Although it may be desirable for candidates to know fellow members and be aware of union conditions, the three-year rule assumes that union members are un-

able to use their good judgment in electing officers. See Wirtz v. Local Union 262, Glass Bottle Blowers Ass'n, 290 F.Supp. 965, 968 (N.D.Cal. 1968). This conflicts with the clear congressional intent that the good judgment of union members in casting their votes should be the primary determinant of whether a candidate is qualified for office. See Steelworkers v. Usery, 429 U.S. 305, 312 (1977).

The three-year requirement is inconsistent with the purposes of the Act and not in compliance with the Secretary's regulation. It unduly restricts the rights of members in good standing to become candidates and denies the right of the members to vote for candidates of their choice. See Local Union No. 406, 254 F.Supp. at 966. We hold that the rule is unreasonable.

The union's reliance on Wirtz v. National Maritime Union of America, 284 F.Supp. 47 (S.D.N.Y.), aff'd on other grounds, 399 F.2d 544 (2d Cir. 1968), is misplaced. There, the court upheld a union rule restricting candidate eligibility for sub-national office positions to individuals who had been union members for five years.[1] The court said that since the union had few lower level officers and no local branches, it could permissibly require that sub-national positions be held by longtime members. Id. at 62. The court also said that it would not interfere with the union's governance of its internal affairs where an overwhelming majority of members had adopted the five-year rule.

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1. Although the five-year rule applied to candidates for sub-national and national office, candidates for national office were also required to have held prior office. The district court held that this prior office requirement was unreasonable. Id. at 66. The Second Circuit affirmed. Wirtz v. National Maritime Union of America, 399 F.2d 544, 550 (2d Cir. 1968).

The rule in National Maritime Union is limited to that unusual factual situation. In contract to the National Maritime Union, the Sailors' Union has many local branches. Its three-year rule restricts candidate eligibility for all offices. Thus, the asserted justification in National Maritime Union of having longtime members hold sub-national office is not present. Also, although the Sailors' Union recently passed the three-year rule in a constitutional referendum, we do not regard the rule as a clear indicator of members' wishes becuase none of the "permit members" was permitted to vote.

VOTER ELIGIBILITY

The union constitution provided that only those individuals who had been union members for three years or more could vote in officer elections. The district court held that the

rule was unreasonable and violative of 29 U.S.C. §481(e). We agree.

The Act expressly guarantees union members the right to vote in union elections. See 29 U.S.C. §§411(a)(1), 481(e). Title IV of the Act was intended to ensure free and democratic union elections. See Local No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen & Packers v. Crowley, 52 U.S.L.W. 4757, 4761 (U.S. June 12, 1984); Steelworkers v. Usery, 429 U.S. 305, 309 (1977). A major goal was to ensure full and active participation by the rank and file in the affairs of the union. American Federation of Musicians v. Wittstein, 379 U.S. 171, 182-83 (1964). The three-year rule deprives some members of their right to vote, prevents democratic elections and seriously restricts participation by union members. We hold the rule violates 29 U.S.C. §481(e).

Our conclusion is supported by the Secretary's interpretative regulation on voter eligibility restrictions. 29 C.F.R. §452.88 provides that a union may reasonably require a new member to remain in good standing for up to a year before being permitted to vote, but that a longer period is unreasonable. The union rule failes to comply with this regulation.

The union argues that the rule is necessary because the seaman's profession is heavily regulated. It points to Coast Regulations which require seaman competence. The union appears to be arguing that the three-year rule, by withholding full membership rights, encourages new members to remain in the union and thereby become competent seamen. This argument is without merit. The union has failed to demonstrate a connection

between the three-year rule and seaman competence. The fact that an individual has been a union member for a specified period of time does not ensure that the member will be competent.

The union also argues that we are bound by Goldberg v. Marine Cooks & Stewards Union, 204 F.Supp. 844 (N.D.Cal. 1962), in which the court upheld a union rule which conferred voting rights only on "full book" members who had acquired five years of experience at sea. Marine Cooks, however, is of little precedential value because it was decided prior to the many Supreme Court decisions emphasizing the Act's goal of free and democratic elections and broad member participation. See, e.g., Crowley, supra; Steelworkers, supra; Federation of Musicians, supra.

In affirming the district court decision, we need not address Turner's argument that a union member has an unqualified right to vote in officer elections and that all voting restrictions violate the Act. We hold only that the Sailors' Union's three-year rule violates 29 U.S.C. §481(e).

AFFIRMED.

Appendix B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

No. C 82-5569 RPA

RAYMOND J. DONOVAN, Secretary of Labor, United States Department of Labor,

Plaintiff,

vs.

SAILORS' UNION OF THE PACIFIC, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA,

Defendants.

[September 27, 1983]

ORDER

The parties' cross-motions for summary judgment came on for a regularly scheduled hearing on September 15, 1983. Having received, read and considered the arguments of counsel, and for good cause appearing, the Court hereby enters the following order.

1. Defendant union conducted an election of officers in December 1981. In order to vote in this election, a union member had to have been a member of the union for three years.

2. The Court finds that the three year requirement is unreasonable and violative of 29 U.S.C. §481(e).

3. Because the Court finds that the election was conducted pursuant to voter eligibility requirements that the Court finds unreasonable and violative of 29 U.S.C.

§481(e), the Court concludes that the election of the officers must be set aside as null and void.

4. The Court orders that defendant union conduct a new election for union officers within 180 days of entry of this Order.

5. The Court further directs that the new election be conducted by means of a mail ballot at the expense of the defendant and under the supervision of plaintiff and his agents, pursuant to the provisions of Title IV of the Labor Management Relations Act and insofar as is lawful and practicable in accordance with defendant's constitution and by-laws.

6. The Court further orders that plaintiff supervise new election of officers. Defendant shall not take any act implementing

election procedures without the approval or authorization and supervision of plaintiff. The authority Court vests in plaintiff with this Order runs from date of this Order until the date of entry of Order by the Court after is has received certification by the Secretary of Labor of the newly elected officers.

7. The Court orders that the persons currently holding office may continue to do so until the installation of officers following the new election. The persons elected as officers pursuant to the new election shall be allowed to serve the remainder of the two (2) year term of office provided for in defendant's by-laws which began on the date of installation following the December 1, 1981, to January 1, 1982, election, and a full constitutional term beginning on the date of installation following the new election.

8. The Court will retain jurisdiction over this action pending completion of the new election. After the election, plaintiff will promptly certify to the Court the names of the persons elected in the new election and certify that the election was conducted in accordance with provisions of Title IV of the Act and insofar as is lawful and practicable in accordance with the constitution and by-laws of defendant union.

The Court intends the above stated orders and directives to be dispositive of the issues raised in the parties' cross-motions for summary judgment.

Finally, Peter Turner, plaintiff in the related action of Turner v. Dempster, C-82-1117, moves to intervene in the instant action. Although the Court recognizes that Turner has a substantial interest in the out-

come of the instant action, the Court believes that because of the above ruling on the motion for summary judgment, allowing Turner to intervene would serve no useful purpose at this time. Accordingly, the Court denies Turner's motion to intervene in this action.

IT IS SO ORDERED.

Dated: September 27, 1983.

ROBERT P. AGUILAR
United States District Judge